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NEWS RELEASE

UNIVERSITY OF DAYTON LAW PROFESSOR PART OF LEGAL TEAM TO RID OHIO OF HANGING CHADS, FIRST CASE NATIONALLY TO GO TO TRIAL

DAYTON, Ohio — A University of Dayton law professor is working with a team of civil liberties lawyers to try to rid Ohio of the hanging chad.

A one-week trial is slated to begin July 26 in U.S. District Court in Akron of the American Civil Liberties Union's class action suit that alleges Ohio's voting systems violate the rights of voters, particularly minorities.

"It's the only case of its kind in the country going to trial," said Richard Saphire, professor of law at the University of Dayton and a member of the state board of directors of the ACLU. "This is very complex litigation because it involves very complex factual and statistical issues and because it involves legal theories that to some extent have been untested. When the Voting Rights Acts of 1965 was passed, nobody thought of the problems we're dealing with today. It was on no one's radar screen. It didn't become an issue in the public consciousness until Florida in 2000. The constitutional issues rely a lot on the Supreme Court decision Bush v. Gore, and those issues haven't been tested either."

Similar law suits have been settled in Florida, Georgia, Illinois and California "by the states agreeing to make changes in voting systems," according to Saphire. A settlement could not be reached in the case, "and the judge has denied two motions in the last two months to dismiss it."

The suit alleges that more than 94,000 Ohioans, mostly minorities, had their ballots rejected in the last presidential election. It calls for the replacement of punch-card systems with systems such as optical scan or touch-screen machines that allow voters to make ballot corrections.

The suit doesn't list all 88 counties in Ohio as defendants. It focuses on three with punch-card systems (Montgomery, Hamilton and Summit) and one (Sandusky) that uses central-count optical scan equipment. During the 2000 presidential election, 70 counties in Ohio used punch cards, according to Saphire.

"Not everyone agrees the system needs to be changed," Saphire noted. "Some believe what happened in Florida was an anomaly. There's a legitimate question about what system to change

to, and another question about where's the money coming from. There are training issues and security questions. But at the end of the day, what is more important than ensuring that our voting systems are reliable and that people are treated equally?"

According to research conducted by the ACLU, there's a strong relationship between the racial composition of a precinct — and the type of voting technology used — and the percentage of discarded ballots there. In Franklin County, for instance, which uses touch-screen voting technology, the percentage of rejected ballots in the 2000 presidential election was one-half of 1 percent — or six times less than Summit County's 3 percent. In 10 precincts in Summit County, including many in the third ward on the West side of Akron where black voters live, the rejection rate was between 10 and 15 percent.

"For those who live in punch-card counties, there's a much greater statistical likelihood that their vote won't be counted," Saphire said. "This violates the Equal Protection Clause of the Fourteenth Amendment to the Constitution. And to the extent that the highest percentages of uncounted votes occur in largely minority precincts, it also violates the federal Voting Rights Act."

Steps have been taken nationally to solve the problem encountered in Florida. President Bush signed the Help America Vote Act in 2002. It created the Election Assistance Commission and authorized \$3.8 billion to help states upgrade voting equipment and train poll workers. The effort has been slowed down primarily by a lack of federal standards for new equipment and concern over technical issues, such as the lack of a paper record of each vote, according to Saphire.

Of 31 Ohio counties set to switch from punch cards to computerized systems in November, only four are currently considering the idea, the Associated Press reported this month.

Saphire has been spending much of his time this summer on the case. This has included working on a number of motions and briefs, meeting with co-counsel to prepare for the trial and attending a pre-trial conference in Akron. He spent last summer taking and defending the depositions of expert and fact witnesses around the state. Colleague Vernellia Randall, a University of Dayton law professor, is a named plaintiff in the case, as is Erin Otis, a 2003 UD law school graduate. UD law students also have been involved in researching various aspects of the case.

The legal team includes lead attorney Paul Moke, professor of social and political studies and vice president for academic affairs at Wilmington College; Scott Greenwood, general counsel of the ACLU of Ohio; Meredith Bell and Laughlin McDonald, attorneys with the national ACLU Voting Rights Project in Atlanta; and Dan Tokaji, assistant professor of law at The Ohio State University.